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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREMY SOLOMON TILLET
et al.,

Defendants and Appellants.

B292235

(Los Angeles County
Super. Ct. No. YA093600)

APPEAL from a judgment of the Superior Court of Los Angeles County, Ronald S. Coen, Judge. Affirmed.

Heather J. Manolakas, under appointment by the Court of Appeal, for Defendant and Appellant Jeremy Solomon Tillett.

Marta I. Stanton, under appointment by the Court of Appeal, for Defendant and Appellant Kenneth Andrew Paul.

Xavier Becerra, Attorney General of California, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Susan Sullivan Pithey,

Supervising Deputy Attorney General, Michael J. Wise, Deputy Attorney General, for Plaintiff and Respondent.

Jeremy Solomon Tillett and Kenneth Andrew Paul attempted to rob a jewelry store. A jury convicted them of second degree attempted robbery, conspiracy to commit robbery, and second degree commercial burglary. The jury found true gang enhancement allegations for each conviction.

Tillett and Paul argue the jury reached insupportable conclusions. Tillett attacks the testimony of the People's gang expert, while Paul argues the trial court improperly instructed the jury. Both object to assessments imposed without determining their abilities to pay.

We affirm. Statutory references are to the Penal Code.

I

We summarize facts in favor of the prevailing trial party.

A

We start with the rooftop break-in attempt at Morgan's Jewelers. Events were in the morning, and shortly we will see the timing matters. Posted store hours were 10:00 a.m. to 6:00 p.m. When the store is closed, employees put everything except inexpensive items in the safe. The next morning, the store would be empty and the vault would be locked between 8:30 a.m. and 8:45 a.m. Morgan's employees arrived at 9:00 a.m. to prepare for the 10:00 a.m. opening.

Stefanie Doll heard noises on the roof at about 8:45 a.m. on February 5, 2015. Doll's office was next to Morgan's Jewelers in the Peninsula Shopping Center in Rolling Hills Estates, California. Outside, Doll saw a rope hanging off the roof.

Julio Gonzalez and Roberto Negrete also were there and saw two men on the roof throwing down ropes. The two men came down from the roof wearing black clothes, ski masks, hooded sweatshirts, and black gloves. One carried a black bag. They walked down a staircase to the parking structure. One of the men reached for his waistband. Afraid, Negrete put his hands up. Negrete could see one had “dark black skin” while the other had “lighter black skin.” One was slim; the other was average. The two men sped away in a dark sedan, heading east on Silver Spur Road toward Crenshaw Boulevard. Doll and Gonzalez found a big hole on the roof going into the back of Morgan’s Jewelers.

Shortly after 8:45 a.m., Raymond Deremiah saw a police roadblock while driving in heavy traffic on Crenshaw Boulevard. The dark sedan in front of him slammed on the brakes when a police car came around a corner. Appellant Tillett got out of the sedan from the passenger side and started climbing the hill on the side of Crenshaw Boulevard.

That morning, Detective Tia Taylor responded to this robbery call and searched the Crenshaw Boulevard area. She found a semiautomatic handgun in the bushes. The gun had no condensation on it.

Around 8:50 a.m., deputies detained Tillett near the roadblock. Deremiah identified Tillett as the man he had seen climbing up the hill.

Sergeant Andrew Gill let a dark Jaguar with paper license plates pass through the roadblock because he was looking for multiple suspects and he saw only one person in the car. Then Gill heard a man had exited this very car, so Gill caught up with

the Jaguar. Derrick Seymour was the driver and Appellant Paul was the passenger.

Gill found a black duffel bag in the backseat containing hooded sweatshirts, dark pants, a black jacket, ski masks, a beanie, gloves, pry bars, a sledge hammer, plastic zip ties, and large carabiners. One of the pry bars had black tar on it. There was black tar paper on the Morgan's Jewelers roof. The carabiners were exactly the same as those found at the crime scene. Gill also found zip ties, gloves, pliers, and box cutters in the glove compartment, and a headlamp in the trunk.

Deputy Juan Perez got a call about the robbery and the dark sedan. Perez stopped a black Camry with paper license plates on Silver Spur Road, west of Crenshaw Boulevard. Derrell Dent was the driver and sole occupant. Perez did not arrest Dent and went to the crime scene at Morgan's Jewelers. Perez realized he forgot to return the Camry keys, so he drove back to the Camry, which now had metal rather than paper license plates. Dent was gone. A backpack that had been in the trunk now was missing.

Phone records connected the Jaguar with Dent in the Camry. There were three people in the Jaguar. Seymour drove it and Tillett and Paul were passengers. Phone records showed Seymour had been communicating with Dent in the Camry while Tillett and Paul were on the roof and after the attempted robbery. There were five text messages between Dent and Seymour between 7:25 a.m. and 7:27 a.m., and one phone call at 11:35 a.m.

DNA from two ski masks matched Tillett. DNA from a third mask matched Paul.

B

We summarize the evidence about the gang allegations against Tillett and Paul.

1

A 2012 McDonald's robbery is not at issue in this appeal, but is relevant to Tillett's gang status.

On November 18, 2012 around 4:15 a.m., Police Captain Ed Ridens responded to a rooftop alarm at a McDonald's in Inglewood, California. Ridens saw a ladder leading to the roof. Tillett dropped down from the ladder in front of Ridens's car. Tillett wore black clothing and a mask. Tillett ran towards a minivan, threw a backpack into the bushes, and dove into the van. The minivan, which had paper license plates, sped away. Ridens followed the minivan and pulled it over. Two people got out of the van: Tillett and the driver, Keith Walton. Ridens arrested both.

Officer Landon Poirier responded to the alarm at the McDonald's and found a black backpack on the sidewalk with a power saw inside. Officer Fernando Vasquez also responded to the alarm and saw a hole cut in the roof over the room containing the store safe. Vasquez searched Walton's car and found several screwdrivers, wire cutters, a two-way radio, a drill, black gloves, and black clothing.

2

We summarize trial testimony from police officers regarding the appellants' gang membership.

Several different officers completed field interview cards for Paul from 2010 to 2014. Each time, Paul admitted he was a member of the Inglewood Family Gang, a Bloods gang. Paul's

monikers were “KB” and “K Boogie.” He often was with other Inglewood Family Gang members.

Officer Cesar Jurado completed a field interview card for Tillett in 2007. The card identified Tillett as an Inglewood Family Gang member but not a “self-admitted” member. It was apparent to Jurado that Tillett was a gang member based on contacts with Tillett, information from other officers, Tillett’s clothing, and Tillett’s frequent presence in a gang area.

Officer Samuel Bailey, a gang expert, testified rooftop burglaries were the signature crime of the Crenshaw Manchester Terrorists clique of the Inglewood Family Gang. Bailey stated Walton, who was involved in the 2012 McDonald’s robbery with Tillett, created that clique to recruit other members from the other four Inglewood Family Gang cliques into a crime crew. The crew started off doing either wall punches or rooftop burglaries where they would cut a hole in the roof of the building they were trying to burglarize. The crew graduated from rooftop burglaries to takeover robberies, specifically targeting jewelry stores. Walton and Dent led the Crenshaw Manchester Terrorists.

Bailey was familiar with both appellants. In Bailey’s presence, Paul admitted he was an Inglewood Family Gang member, and said his moniker was “K Boogie.” Bailey knew Paul had multiple gang tattoos and lived within Inglewood Family Gang territory. Paul was “flamboyant” about his Inglewood Family Gang membership.

Bailey said Tillett was an integral member of Dent’s and Walton’s crew. Tillett could site a roof hole to hit a small interior room with the safe. He also could wend his way through electrical and sprinkler systems.

Bailey testified Tillett, Dent, and Walton were involved in a series of T-Mobile store burglaries. Paul, Tillett, Dent, and Walton were active Inglewood Family Gang members.

The People asked Bailey a hypothetical question based on the facts in this case. This question asked Bailey's opinion on whether this hypothetical incident was committed for the benefit of, at the direction of, or in association with a gang, with the specific intent to promote, further, or assist gang member criminal conduct. Bailey answered yes, based on the "M.O." of the Crenshaw Manchester Terrorists clique, a "particular group of gang members from Inglewood Family." Bailey testified the clique's "M.O." was to have two gang members cut a hole in the roof of the jewelry store. He believed the gang members planned "a robbery and/or kidnapping" but they were seen by a security guard while they were on the roof and had to abandon the plan and flee. Bailey testified suspects used zip ties when they anticipated binding and moving victims.

Bailey stated the gang members would sell the stolen jewelry and use some proceeds to finance future Inglewood Family Gang crimes. He also said gang members might keep proceeds for themselves.

II

The jury convicted Tillett and Paul of second degree attempted robbery (count 1), conspiracy to commit robbery (count 2), and second degree commercial burglary (count 3). The jury also found gang enhancement allegations true for each count. The court denied both motions for a new trial.

The court sentenced Tillett and Paul to 10 years. The court used count 2 as the base term and imposed the five-year high term plus five consecutive years for the true gang enhancement

allegation under section 186.22, subdivision (b)(1). The court ordered Paul's sentence be consecutive to a federal prison sentence. For both appellants, the court imposed and stayed sentences on counts 1 and 3 and imposed fines and assessments.

III

Substantial evidence supports Tillett's and Paul's convictions for attempted robbery and conspiracy to commit robbery.

We review the evidence in the light favorable to the People to determine whether a rational jury could have found the essential elements of the crimes beyond a reasonable doubt. (*People v. Virgil* (2011) 51 Cal.4th 1210, 1263.) We accept logical inferences from circumstantial evidence. (*People v. Maury* (2003) 30 Cal.4th 342, 396.)

Tillett and Paul do not deny participating in the Morgan's Jewelers incident. Instead, they argue they intended to commit burglary, not robbery. This argument fails. We summarize the relevant evidence.

Attempted robbery. Tillett and Paul were on the roof at 8:45 a.m. The store opened at 10:00 a.m. but employees arrived at 9:00 a.m. At 8:45 a.m., the steel walk-in vault containing the store's jewelry was locked and no one could get in without the combination. Tillett and Paul could not have gotten into the vault without an employee's help; they had no tools to break open the vault. Tillett and Paul came down from the roof with a black bag like the black bag in the Jaguar (where Tillett and Paul were passengers minutes after leaving Morgan's Jewelry) containing zip ties, which robbers use to bind victims. The Crenshaw Manchester Terrorists clique, which included Dent and Tillett, started with rooftop burglaries as their "signature crime" and

eventually moved to takeover robberies, specifically targeting jewelry stores.

Conspiracy to commit robbery. The same evidence applies here. Tillett and Paul were together on the roof of Morgan's Jewelers, where there was a large hole that opened to the store's back room. They were in the same car minutes after leaving the store. Phone records showed the people in the car where Tillett and Paul were passengers communicating with Dent in the Camry before and after the Morgan's Jewelers incident. Paul concedes the evidence showed an agreement, though he claims it was an agreement to burglarize, not rob.

A rational jury could have found the essential elements of robbery and conspiracy to commit robbery, rather than burglary, beyond a reasonable doubt. The jury drew logical inferences from this circumstantial evidence, and we accept those inferences. (*People v. Maury, supra*, 30 Cal.4th at p. 396.)

IV

Substantial evidence supports the gang enhancements for each count.

The question is whether a rational jury could have found the essential elements of the gang enhancements beyond a reasonable doubt. (*People v. Vy* (2004) 122 Cal.App.4th 1209, 1224.)

The answer is yes. Expert opinion can support a gang enhancement under section 186.22, subdivision (b)(1). (*People v. Vang* (2011) 52 Cal.4th 1038, 1048.) In response to a hypothetical mirroring the facts in this case the gang expert, Bailey, opined the Morgan's Jewelers escapade was committed for the benefit of, at the direction of, or in association with a gang with the specific intent to promote, further, or assist gang

member criminal conduct. Bailey based his opinion on the Crenshaw Manchester Terrorists clique's "M.O.", which was to have two gang members punch a hole in the roof of the jewelry store. Bailey also testified the proceeds of the stolen jewelry could be used to finance future Inglewood Family Gang crimes.

Bailey testified rooftop burglaries were the signature crime of the Crenshaw Manchester Terrorists clique. This clique graduated from rooftop burglaries to takeover robberies. They specifically targeted jewelry stores. Bailey also stated Tillett was an integral member of the crew that Dent and Walton put together, based on Tillett's ability to place and cut roof holes and on Tillett's involvement in the McDonald's robbery. Bailey testified Paul, Tillett, Dent, and Walton were active Inglewood Family Gang members.

Other evidence augments this support. Phone records showed Seymour in the Jaguar (where Tillett and Paul were passengers) communicated with Dent in the Camry, both while Tillett and Paul were on the roof and after the attempted robbery. Many officers completed field interview cards for Paul. Paul repeatedly admitted his Inglewood Family Gang membership. An officer completing a field interview card for Tillett identified Tillett as an Inglewood Family Gang member based on contacts with Tillett, on information from other officers, on Tillett's clothing, and on Tillett's penchant for the gang's territory.

The jury could have found beyond a reasonable doubt Tillett and Paul acted at the direction of and for the benefit of a gang, and specifically intended to promote or assist in gang member criminal conduct. (§ 186.22, subd. (b)(1).) The record

justified the jury's findings. (*People v. Albillar* (2010) 51 Cal.4th 47, 60.)

V

Tillett argues the trial court erroneously allowed gang expert Bailey to offer his opinion on Tillett's guilt based on a hypothetical question. This argument fails. Bailey did not give such an opinion.

We review the admission of evidence for an abuse of discretion. (*People v. Booker* (2011) 51 Cal.4th 141, 170.)

The People asked Bailey a hypothetical based on the facts in this case and asked whether Bailey believed the hypothetical individuals acted for the benefit of, at the direction of, or in association with a gang, with the specific intent to promote, further, or assist gang member criminal conduct. According to Tillett, Bailey "referenced specific facts of the case not presented in the hypothetical," thereby offering his opinion on the case and on Tillett's guilt, as opposed to the hypothetical.

We summarize Bailey's response to the hypothetical. Bailey gave a detailed explanation for the basis for his opinion, which included the history of the Crenshaw Manchester Terrorists clique. The trial court denied Tillett's counsel's request to strike Bailey's testimony as "overly broad" but acknowledged the testimony was "getting far reaching" and should be confined to the hypothetical. The trial court also noted Bailey had already testified to everything he said in response to the hypothetical. When Bailey later referred to the store manager's arrival time, the court interrupted and reminded the People to "keep it to the hypothetical." The court denied Tillett's counsel's request to strike that testimony, stating "There is nothing objectionable." As Bailey discussed collaboration

between the people on the roof and in the cars, Tillett's counsel interrupted and asked, "Is it clear that he is asking about the hypothetical[?]" The trial court answered, "It is always clear. It's only about the hypothetical."

Bailey did not express an opinion on Tillett's guilt or Tillett's specific intent to commit any criminal activity. He responded to a hypothetical question tracking the evidence already presented to the jury and opined the alleged criminal conduct was done to benefit a gang, with the requisite specific intent. This was proper. (*People v. Perez* (2017) 18 Cal.App.5th 598, 607.)

There was no abuse of discretion.

VI

The trial court's failure to instruct the jury under CALCRIM No. 334 or CALJIC No. 3.18 was harmless error.

We independently review claims of instructional error. (*People v. Guiuan* (1998) 18 Cal.4th 558, 569–570.)

Tillett testified at trial. Tillett was Paul's accomplice: Tillett was prosecuted for the same offenses in the same case. (§1111.) Paul argues the trial court committed prejudicial error by failing to instruct the jury to view Tillett's accomplice testimony with caution, using CALCRIM No. 334 or CALJIC No. 3.18.

In this court, the People acknowledge error.

When an accomplice testifies, the court must instruct the jury the testimony should be viewed with distrust and the defendant cannot be convicted on the basis of the accomplice's testimony unless that testimony is corroborated. (*People v. Zapien* (1993) 4 Cal.4th 929, 982.) The trial court did not do so. But this error was harmless because there was sufficient

corroborating evidence in the record. (*Ibid.*) The jury did not need Tillett's testimony to convict Paul of attempted robbery, conspiracy to commit robbery, or burglary, or to find true the gang enhancement allegations for each conviction. To the contrary, Tillett's testimony cast doubt on Paul's involvement in the Morgan's Jewelers incident. When asked if the other person on the roof was Paul, Tillett said, "I can't recall if it was him or not." Tillett testified he had no idea who the other person in the car was after he left Morgan's Jewelers even though other evidence showed it was Paul. Tillett stated he did not know Paul or talk to him before this case started.

The jury convicted Paul based on evidence other than Tillett's testimony. Paul's claim fails because Tillett's testimony did not prejudice him.

VII

Tillett and Paul forfeited their claims under *People v. Dueñas* (2019) 30 Cal.App.5th 1157 (*Dueñas*).

Tillett asks us to remand his case for the trial court to determine whether he can pay court assessments in light of *Dueñas*. He also asks that we stay his restitution fine until the People prove he can pay it.

Similarly, Paul requests we vacate court assessments and stay his restitution fine under *Dueñas* because the trial court did not determine whether Paul could pay the assessments and fines before imposing them.

Neither Tillett nor Paul objected to the assessments or fines in the trial court. They thus forfeited their *Dueñas* arguments. (*People v. Frandsen* (2019) 33 Cal.App.5th 1126, 1153–1155; *People v. Bipialaka* (2019) 34 Cal.App.5th 455, 464.)

DISPOSITION

The judgment is affirmed.

WILEY, J.

We concur:

BIGELOW, P. J.

STRATTON, J.